

⋮

**CIVIL ACTION FILE
NO. 1:06-CV-31 (WLS)**

1:06-CV-31(WLS), sole entry of May 9, 2006).

Among other things, this rule provides in essence that if a defendant will acknowledge service by mail, thereby waiving personal service of the complaint, (by signing and returning the waiver and acknowledgment of service form within thirty days of receipt) he/she then has sixty days in which to file an answer or other responsive pleading. F. R. Civ. P. 4(d)(2)(F) and (3).

In this case, if the defendants had timely signed and returned the waiver and acknowledgment of service forms their answers or other responsive pleadings would have been due shortly prior to July 15, 2006. Neither defendant acknowledged service by mail, thus requiring personal service upon them by the United States Marshal Service. On August 24, 2006, the Clerk of Court directed personal service upon both defendants (doc. # 15). Therefore, when the plaintiff filed his Motion for Default Judgment on or about August 2, 2006, neither defendant had been served, they were not in default and the plaintiff's motion was clearly premature.

It is for the above reasons that the undersigned must RECOMMEND that the Motion for Default Judgment be **DENIED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may file written objections to this recommendation with the Honorable W. Louis Sands, United States District Judge, WITHIN TEN (10) DAYS of receipt thereof.

SO RECOMMENDED, this 11th day of December 2006.

/s/ **Richard L. Hodge**

RICHARD L. HODGE

UNITED STATES MAGISTRATE JUDGE